

Town of Scarborough

Zoning Board of Appeals

July 8, 2009

AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (June 10, 2009)
4. Appeals
 - a. Appeal No. 2487 – A Limited Reduction of Yard Size Appeal by Eralda Adams, 7 Virdap Street, Assessor's Map U1 Parcel 51, to construct a home 20 feet from the front property line in the R-4 Zone
 - b. Appeal No. 2488 – A Special Exception Appeal by John and Winifred Coty, 7 Fogg Road, Assessor's Map R81 Parcel 818, to create an accessory unit above their garage
 - c. Appeal No. 2489 – A Special Exception Appeal by Priscilla Dunn, 17 Dunn Estates Drive, Assessor's Map R4 Parcel 2508, to allow an existing accessory unit to remain above her garage
 - d. Appeal No. 2490 – A Limited Reduction of Yard Size Appeal by William and Pamela French, 172 Gorham Road, Assessor's Map R54 Parcel 22, to construct a second story addition 30 feet from the front property line in the R-2 Zone
 - e. Appeal No. 2490 – A Variance Appeal by William and Pamela French, 172 Gorham Road, to construct a small triangular section of the second story addition 25 feet from the front property line in the R-2 Zone
5. Zoning Board Comments
6. Adjournment

NO NEW APPEALS SHALL BE TAKEN UP AFTER 10:30 P. M.

Town of Scarborough

Zoning Board of Appeals

July 8, 2009

MINUTES

Members Present

Staff

Mr. Blaise
Mr. Loisel
Mr. Maroon
Mr. Massengill
Mr. Stark

Mr. Grysk, Code Enforcement Officer
Ms. Logan, Recording Secretary

1. Call to Order

Mr. Maroon called the meeting to order at 7:05 P. M.

2. Roll Call

The Recording Secretary called the roll; Mr. Crockett and Mr. Dougherty were absent. Mr. Maroon welcomed Mr. Stark to the Board and authorized him to vote.

3. Approval of Minutes (June 10, 2009)

Mr. Blaise moved to approve the minutes of June 10, 2009 as written; Mr. Loisel seconded.

Voted 4-0-1 – Mr. Stark abstained

4. Appeals

a. Appeal No. 2487 – A Limited Reduction of Yard Size Appeal by Eralda Adams, 7 Virdap Street, Assessor’s Map U1 Parcel 51, to construct a home 20 feet from the front property line in the R-4 Zone

Mr. Jim Fisher, of Northeast Civil Solutions, gave a brief summary of the project as presented at the May 2009 meeting; he stated that there were wetlands in the rear of the lot and the building envelope. He stated that the lot was grandfathered since the 1920s and the appellant wanted to reduce the front setback to 20 feet to pull the building toward the street in keeping with the character of the neighborhood and to keep the structure further away from the wetland. He stated that they were requesting reduction of five feet on the side because zoning had overtaken this lot and the two 15 foot side setbacks would allow only a 20 foot wide house. He stated that they needed the extra area for eaves for weather protection and the extra space would allow for a house with living space about 22 feet wide; he noted that other homes in the area on the same size lot were much wider.

Mr. Maroon and Mr. Fisher addressed the criteria as presented in writing.

Mr. Maroon opened the public hearing; he read three letters in opposition to the appeal from Carol Turner, of 6 Virdap Street, Attorney Huckel-Bauer for Peter and Libby Cassat, 8 Virdap Street, and Attorney John Wall for Summerwind Cottage, LLC, 5 Virdap Street.

Ms. Suzanne Foley-Ferguson, of 331 Black Point Road, stated that she had been asked by the abutters to look at this request because she was up on Town and environmental policies. She asked whether the Board would consider the previous appeal for reconsideration; Mr. Maroon replied that the Board needed

to address only the appeal on the table. Ms. Foley-Ferguson stated that this site was in the stream protection area of the Resource Protection Zone; she stated that the Shoreland Zoning Ordinance was clear that it was a tidal wetland and the setback should be 250 feet so the approved variance was actually 225 feet. She stated that this site was also in the flood plain and the Resource Protection Zone required a 30,000 square foot lot and she believed the edge of the wetland is in the middle of the lot.

Mr. Michaud, who noted that he lived directly across the street, stated that he objected to this structure because of its proximity to the sensitive areas and the land to the north had been cleared and the Town cited the owner. He stated that there had been no mention of Angel Creek which is very close to the boundary and the land to the south was a seasonal residence that was there before zoning and five feet from the property line. He stated that the appellants stated that they wanted to build a modest building but it was enormous and aesthetically unsound for the neighborhood.

Ms. Carol Turner, of 6 Virdap Street, stated that her year round house was 20 feet wide and 30 feet back from the road, as are most of the homes. She asked where the fuel tanks would be located and how many kitchens there would be; she stated that the house looked like a three family house and was massive for Higgins Beach. Ms. Ellen Copolla, of 14 Kent Street, stated that Mrs. Scala, the mother of Ms. Adams, had complained that she could not sell her property because it was being deemed unbuildable, but the Copolla family had offered to purchase the property years ago and Merton Henry had offered to buy it but Mrs. Scala refused to sell. Ms. Copolla stated that the appellant had applied to the DEP with plans to build a small house; she stated that the lot was much too small for a house of the proposed dimensions and hoped the Board would not allow it to be built.

Ms. Rachel Navarol, daughter of Jane Waning, of 5 Virdap Street, stated that she enjoyed the peace at her mother's cottage which would be disturbed by building a three story house that was completely out of character with the neighborhood. She stated that the house would block the sunlight and with all the cars for a three story house it would be like sleeping next to a highway. Ms. Navarol stated that the area was often flooded and this house would cause more issues. Mr. Peter Waning, 5 Virdap Street, stated that the soil conditions were very poor and excavating close to their cottage would create a sinkhole and undermine the cottage and degrade the newly paved street.

Ms. Foley-Ferguson stated the determination of whether this site is in the Resource Protection Zone was critical to the variance because it would not be a buildable lot and would need a lot more variances. She stated that the Board should do a site walk because the edge of the stream was not where it was shown on the map and the site was not being taxed as a buildable lot. She stated that this was a hardship that the laws had changed and the town should try to work with the appellant though they knew the lot was being taxed as an unbuildable lot. To a question from Ms. Foley-Ferguson, the Board agreed that it did not want to revisit the appeal approved at the May 2009 meeting.

Mr. Michaud stated that he had spoken to a DEP representative who indicated that the line of Angel Creek continued to move in. Ms. Turner stated that there were wetland plants at the front of the land.

Attorney Nathaniel Huckel-Bauer, who represented Peter and Libby Cassat, of 8 Virdap Street, asked whether it was necessary to use the site in the same manner; he stated that a 20 foot wide house was big enough and if the other houses of the same size were within the setback requirements this one would also be livable within the setbacks. He stated that, most important, were the physical features of the lot and, with the variance to the wetlands, the house could be built in a manner similar to everyone else's property. Mr. Huckel-Bauer stated that they were moving the house toward the front to protect the resource, but they would build up to the minimum front and side setbacks so they should consider whether there was an alternative location. He stated that they were not moving it further from the resource but simply using all the space available.

Ms. Susan Rossetti, of 10 Virdap Street, showed a photo of how much land had been taken over by the wetland; she stated that doing anything to the site would affect the land around them; she stated that she was concerned that water would run where it had not been in the past.

Mr. Maroon closed the public hearing.

To questions from Mr. Massengill, Mr. Fisher replied that they measured the proposed height of the building, which would be 32 feet, to the roof peak; he stated that that was three feet less than the maximum allowed. He stated that the 1984 DEP permit was approved but the construction never took place.

Mr. Fisher stated that all they wanted to do was build a house; he stated that the abutters had the same rights but their houses had been built before zoning. He stated that this house would be further away from the front and side and the water than quite a few of the existing homes, some of which were also three stories. Mr. Fisher noted that there would not be parking on the street because it was not allowed by the town; he stated that there would be two people in the house year round. He stated that a 22 by 50 foot house was a relatively small building and there would be one kitchen, bedrooms, a personal office which would not be out of character with the neighborhood. He stated that the house would be to the north of the other structures and would therefore not block anyone's sun; he stated that the physical features were the same as the surrounding lots. Mr. Fisher stated that moving the building forward would benefit everyone. He stated that they had gone to the DEP before coming to the town to determine their issues and this was a viable lot according to the DEP.

To a question from Mr. Blaise, Mr. Fisher replied that the depth of the house would be 44 feet. Mr. Maroon noted that most of the building envelope was being used. He stated that the Board had to address the issue of moving the building envelope forward ten feet and expanding it five feet on one side. To a question from Mr. Maroon, Mr. Fisher replied that they wanted to move toward the left side to be further from the wetland and they were trying to maintain as much buffer as possible. Mr. Loisel asked whether it would be closer to the wetland if the building envelope were shifted to the northwest; Mr. Fisher replied that it would not.

Mr. Maroon moved to approve the appeal to move the house forward 10 feet but take 30 feet from the east away from the building envelope and move the house away from the side with a similar building envelope; Mr. Massengill seconded.

Mr. Loisel stated that he was surprised at the size of the building envelope. He asked how many of the nearby buildings had three stories; Mr. Fisher there were several as evidenced by the photos presented.

Mr. Grysk stated that he would like to see the appeal tabled so that an accurate plan of what the Board was suggesting could be submitted and the Board should vote on a specific plan.

Mr. Maroon withdrew his motion. Mr. Maroon moved to table the appeal until a new plan was submitted; Mr. Blaise seconded.

Voted 5-0 to table

b. Appeal No. 2488 – A Special Exception Appeal by John and Winifred Coty, 7 Fogg Road, Assessor's Map R81 Parcel 818, to create an accessory unit above their garage

Mrs. Coty stated that they had recently built an addition and wanted to add a 750 square foot accessory unit on the rear of their garage. Mr. Grysk stated that the proposal met all the requirements.

Mr. Maroon and Mrs. Coty addressed the criteria and the Registration of Accessory Units form.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal; Mr. Maroon closed the public hearing.

Mr. Massengill moved to approve the appeal as presented; Mr. Loisel seconded.

Voted 5-0

c. Appeal No. 2489 – A Special Exception Appeal by Priscilla Dunn, 17 Dunn Estates Drive, Assessor’s Map R4 Parcel 2508, to allow an existing accessory unit to remain above her garage

Ms. Dunn stated that in 1998 she built a three car garage with a dwelling above it and lived in it until 2001 when she built her home. She stated that she had building permits and Certificates of Occupancy for both units and did not realize that there was an illegal unit and now wanted to make it legal. Mrs. Dunn stated that she now lived in the house and a friend rented the unit above the garage

Mr. Maroon confirmed that when the house was completed the first kitchen should have been removed so it did not create a second unit. Mr. Grysk stated that the appellant had the option of removing the kitchen or applying for an accessory unit. Mr. Maroon noted that one of the goals of creating the accessory unit regulations was to identify existing units. Mr. Grysk noted that during the 1980s in-law apartments were allowed without a kitchen but during the 1990s no kitchen appliances were allowed; he explained that during the 1980s one appliance had to be eliminated so that it would not be considered a kitchen. Mr. Grysk stated that he was resolving the septic system issues and all the standards would be met.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal; Mr. Maroon closed the public hearing.

Mr. Maroon and Ms. Dunn addressed the criteria and the Registration of Accessory Units form.

Mr. Blaise moved to approve the appeal as presented; Mr. Massengill seconded.

Voted 5-0

d. Appeal No. 2490 – A Limited Reduction of Yard Size Appeal by William and Pamela French, 172 Gorham Road, Assessor’s Map R54 Parcel 22, to construct a second story addition 30 feet from the front property line in the R-2 Zone

Mr. French displayed his lot and noted that 7.5 feet in the front was taken for street widening and he needed to be 75 feet from the Resource Zone. He stated that his abutter sold him a 30 foot strip of land which made some of the lot more compliant but the house was within that 30 foot strip. Mr. French stated that they wanted to continue the roof line about five feet and put in a dormer so the existing ranch house would look like an expanded cape.

Mr. Maroon noted that the triangle which needed a variance would create a functional issue if it were not built because it would take the ridge pin out and make the addition unsafe.

Mr. French and Mr. Maroon addressed the criteria.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal; Mr. Maroon closed the public hearing.

Mr. Massengill moved to approve the appeal as presented; Mr. Loisel seconded.

Voted 5-0

e. Appeal No. 2490 – A Variance Appeal by William and Pamela French, 172 Gorham Road, to construct a small triangular section of the second story addition 25 feet from the front property line in the R-2 Zone

This item was discussed with Appeal No. 2490. Mr. Maroon and Mr. French addressed the criteria as presented in writing.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal; Mr. Maroon closed the public hearing.

Mr. Loisel moved to approve the appeal as presented; Mr. Blaise seconded.

Voted 5-0

5. Zoning Board Comments

Mr. Maroon welcomed Mr. Stark to the Board.

6. Adjournment

The meeting was adjourned at 8:55 P. M.